IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5377 OF 2003

KHADI ASHRAM ...APPELLANT (S)

VERSUS

THE STATE OF HARYANA & ANR. ...RESPONDENT(S)

CIVIL APPEAL NOS.6150-6151 of 2008 @ SLP(C) NOS. 1158-1159 OF 2004
CIVIL APPEAL NO. 5379 OF 2003
CIVIL APPEAL NO. 7139 OF 2003
CIVIL APPEAL NO. 7140 OF 2003
CIVIL APPEAL NO. 7141 OF 2003
CIVIL APPEAL NO. 9066 OF 2003
CIVIL APPEAL NO. 2655 OF 2006

O R D E R

Leave granted in SLP(C) Nos. 1158-1159 of 2004.

In this bunch of Civil Appeals filed by the assessees the vires of Haryana Municipal Amendment Act, 2001, whereby the definition of `annual value' in clause (i) of Section 2 of the Principal Act has been amended. It is this amendment which is challenged on the ground that it is violative of Article 14 of the Constitution. One more challenge has been made in this bunch of Civil Appeals. It is to the directions issued by the State Government under proviso (ii) of Section 2(1)(b) and (c) as introduced by the said impugned amending Act.

Prior to the amendment of the Principal Act, clause (b) and clause (c) of Section 2

(1) gave the definition of the words `annual value' to mean in the case of house or building the gross annual rent to be calculated on the basis of the fair rent fixed under the law relating to rent restricted for the time being in force or in cases where fair rent was not fixed, the gross annual rent was to be calculated at the hypothetical rent at which the property was expected to be let out or is actually let out, whichever is greater, subject to certain deductions mentioned therein.

After the amendment, clause (b) of Section 2(1) defining `annual value' has been substituted by the following two clauses:-

> **"Clause (b): In the case of any land on which no building has been erected, but on which a building can be erected, and on any land on which a building is in the process of erection, five per cent of the estimated market value of the land;**
>
> **(c) In the case of any house or building whether self-occupied or tenanted, five percentum on the sum obtained by adding the estimated present cost of erecting the building, less such amount as the Government may deem reasonable to be deducted on account of depreciation, if any, to the estimated market value of the site and any land attached to the house or building."**

The two clauses are clauses (b) and (c) inserted in the definition of annual value under Section 2(1).

On reading the said amendment it becomes clear that the Legislature decided to change the basis of annual value by substituting the rental method by what can be simplistically

stated as capital value method. Under the capital value method the parameter laid down is market value of the land and cost of construction of the building thereon. It is well settled that in India property tax can be levied on the building and the land separately. This

dichotomy, therefore, has the basis of property tax enumerating enactments.

Valuation, strictly speaking, is not a matter of law. Broadly, it is a matter of estimation. It is always open to the Legislature to impose tax separately on land and on building. There are different methods of valuation, namely, actual rent, hypothetical rent, cost of construction method, contractors' method and even the capital value method. It is open to the Legislature to select anyone of the above methods of valuation for the purpose of levying property taxes. It is always open to the Legislature to lay down the parameters on the basis of which annual value is required to be fixed. As stated earlier, prior to the amendment, annual value of the property was confined to house and building. At that time the basis of the annual value was the rental method. However, it appears that in due course of time, on account of price escalation, the Legislature decided to change the definition of annual value which, in effect, brings in the concept of capital value in place of rental value. There is one more reason why the amendment became necessary. Prior to the amendment, property tax was levied only on building and in the

process the cost of the land came to be excluded. This has resulted in loss of revenue to the Municipalities. Therefore, by reason of the said amendment the cost of construction plus the value of the land has been taken as the basis of fixing the annual value. In our view, therefore, it cannot be said that the amended clauses (b) and (c) to Section 2(1) inserted by the impugned Amendment Act, 2001, is discriminatory or arbitrary or violative of Article 14 of the Constitution. In this regard, we find no infirmity in the impugned judgment of the High Court.

As regards the challenge to the directions issued by the State Government under

proviso (ii) to Section 2(1)(b) and (c), as noticed by the amendment, it has been vehemently urged on behalf of the assessees before us the formula fixed by the State Government for the purposes of determining the value of the property is an arithmetic formula which leaves no discretion with the Municipal Committee/Council to vary the same even in cases where the actual market value of the property in question is less than the value arrived at on the basis of the formula. This, according to the assessees, does not leave any scope for raising any objections to the proposed valuation of property and, therefore, the provision regarding inviting objections to the proposed valuation has been rendered redundant. In this connection it has been further urged that the State Government is also not justified in fixing the market value of the land on the

basis of the rate as fixed by the District Collector, which according to the appellants, do not necessarily reflect actual value of the land.

We find no merit in this argument. Under proviso (ii) quoted hereinabove it is, inter alia, provided that the Government

may fix the <u>basis</u> of assessing the current <u>market value of the rent</u> as well as the cost of erecting the building and depreciation thereon. Further, under the said proviso it is stated that different rates may be determined for different categories of buildings and lands.

Before analysing proviso (ii) we quote hereinbelow the directions issued by the State Government under proviso (ii) vide its Memo No. 9/31/2001–5K-T dated 12th December, 2001:-

"From

Commissioner and Secretary Govt. Haryana,

Local Govt. Department.

To

All the Executive Officers/Secretaries of
All Municipal Councils/Corporations.

Memo No.9/31/2001-5K-T dated 12.12.2001.

Subject:- Directions for assessing House Tax amended procedure thereof.

Reference to Memo No. 4315-GS, Memo No. 4E-2001/4386-4437, Memo No. 4E-2(1)(i)1/4827 – 78 dated 25.1.2001 and Memo No. 4E-2001/7324-76 dated 9.2.2001 on the above mentioned subject.

3. Serial No.4 of Government Memo No. 4315-66, dated 25.1.2001 as amended as under:-

4. (a) The following formula be applied for determining the value of land and super structure of residential and commercial areas.

1.	**Value of land**	**= Estimated cost of construction + cost of land as per Collectors' rate.**
2.	**Annual value of the property.**	**= 5% of annual value.**
3.	**Rebate of annual repair**	**= 10% annual value of the property.**
4.	**Annual value after rebate**	**= 90% of annual value**
5.	**Land and Building Tax**	**= (a) 2.5% of annual value determined after rebate for residential buildings**
	(c)	**5% of annual value after rebate in**
	(d)	**respect of commercial building.**

(b) The revised formula for determining of cost of land and building as per revised scheme of industrial and other institutions is as under:-

1.	**Value of the property**	**= Cost of construction of building + land as per Collectors' rate of the Constructed area (value of the vacant land will not be taken into consideration).**
2.	**Annual value of the property**	**= 5% of the annual value of the property.**
3.	**Yearly rebate for Maintenance.**	**= 10% of annual value of the property**
4.	**Annual value after Rebate.**	**= 90% of the annual value.**
5.	**House Tax.**	**= 5% of annual value after rebate.**

Note:- If actual rent is more than annual value then actual rent shall be treated as annual value.

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6. Clause 4 of Government Memo No. 4E/4386-4437, dated 25.1.2001 be read as under:-

1. To obtain necessary approval in the Meeting of Municipal Council/ Corporation.	**18.12.2001**
2. Publication of tax assessment list:	**19.12.2001 to 25.12.2001**
3. Notice to the owners of the property:	**26.12.2001 to**

05.01.2001

4. Decision on the objection of the owners: Upto 10.02.2001

5. Final publication of tax assessment list: 11.02.2001 to 15.02.2002

6. Distribution of bills: 20.02.2002 to 28.02.2002

7. The Municipal Councils/Corporations who have not constituted Sub Committees in terms of Section 25 of Haryana Municipal Business Bye-laws for consideration of objections by building and house tax committees be ensured to be constituted before 18.12.2001.

Sd/- Superintendent Committee-1.

For Commissioner & Secretary, Govt.Haryana,

Town Improvement Department."

The important point to be noted is that under proviso (ii) different rates for different categories of buildings and lands are required to be determined by the Government. When it comes to

the market value of the land the Government has chosen the cost of the land as per rate fixed by the Collector. It is a matter of common knowledge that Collector's rates are normally fixed under revenue laws. These rates are basically made applicable to assess and fix stamp duties. Essentially these rates are guidance rates or otherwise also called as basic value. In our view the Memorandum dated 12.12.2001 issued by the Government defines the value of the land to mean estimated cost of construction plus cost of land as per the Collector's rate and five per

cent of that value is fixed as annual value of the property. The Memo, therefore, clearly indicates that the Government has only fixed the basis of the market value of the land, the cost of erecting the building and depreciation, to arrive at the value of the land. The formula indicated in the said Memorandum falls within the ambit of the said proviso (ii). At this stage we may clarify that it is always open to the assessee in the assessment proceedings to show that the application of those rates in individual particular case is not correct. Application of the formula mentioned in the Memo of the Government is a matter of assessment. It is always open to the assessee to produce its own valuation report to show to the Adjudicating Authority as to the correct market value of the land and the correct cost of construction of building on a given date. Fixing of the guidance rate is a concept which is different from application of the rate to the facts of a given case under Section 70 of the said 1973 Act. Also it is made clear that the imposition of the property tax by the Committee is subject to the general or special order of the State Government and that, in any event, the rates of any tax shall be determined by the different subjects to the maximum limit fixed by the State Government.

In the circumstances of the case, there is no merit in the contention advanced on behalf of the assessees that on account of formula fixed by the State Government, which is an arithmetic formula, no discretion is left with the Municipal Committee to vary the same at the time of assessment. In any event, we have sufficiently clarified the scope of assessment. We again re-iterate that during the assessment the assessees would be entitled to produce the valuation report and show to the Adjudicating Authority the market value of the land on a given date. It may be noted that generally the guidance rates are lower than the correct market value. The said rates generally forms the minimum basis of valuation in the

assessment proceedings.

For the afore-stated reasons, we see no reason to interfere with the impugned judgment. The Civil Appeals are accordingly dismissed with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi, **.....J**
October 14, 2008 **[B. SUDERSHAN REDDY]**